

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
RALEIGH DIVISION**

**IN RE:**

**ASSET TRADER**

**CHAPTER 7**

**CASE NO.: 16-02794-5-DMW**

**DEBTOR**

**OBJECTION TO CHAPTER 7 TRUSTEE'S MOTION FOR AN  
ORDER APPROVING A PUBLIC SALE AND BIDDING PROCEDURES  
FOR SALE AND FOR OTHER RELIEF**

NOW COMES Atria Management Services, Inc. (“Atria Management”), a secured creditor of Asset Trader (the “Debtor”), by and through undersigned counsel, and files this Objection to Chapter 7 Trustee’s Motion for An Order Approving a Public Sale and Bidding Procedures for Sale and for Other Relief (hereinafter, the “Objection”). In support of this Objection, Atria Management states, as follows:

1. On March 26, 2016 (the “Petition Date”), the Debtor, a nonprofit corporation organized and existing under the laws of the State of North Carolina, filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code (the “Bankruptcy Case”). Thereafter, the case was converted to one under Chapter 7 on September 14, 2016 and James B. Angell (the “Trustee”) was duly appointed as Chapter 7 Trustee.
2. On September 9, 2016, Atria Management, as a fully secured creditor pursuant to 11 U.S.C. §506(a) filed an Amended Proof of Claim, as amended [Claim No. 9-1] (the “Proof of Claim”) in the principal amount of \$385,077.29 (the “Indebtedness”)<sup>1</sup>, plus accrued pre and post-petition interest, attorney’s fees and costs, and asserting a First Preferred Ship’s Mortgage (the

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<sup>1</sup> Atria Management is in the process of preparing and filing a Second Amended Proof of Claim which shall reflect, among other things, attorney’s fees and costs incurred by the secured creditor up through and including April, 2017.

“Ship Mortgage”), to secure payment of Indebtedness, together with interest and other sums due under the Promissory Note, against property of the Debtor’s estate consisting of the following collateral: motor yacht known as the “Silent Wings” (a/k/a Asset Trader), 1990 104’ Derecktor with MTU twin, 1,280hp diesel engines, Hull ID DKRD 1900G090 (the “Vessel” or “Collateral”).

3. Atria Management is owner and holder of the Ship’s Mortgage, which was duly and properly recorded with the U.S. Coast Guard, Official No. 1097489, perfecting the security interest of Atria Management in the Vessel more than ninety (90) days prior to the Petition Date and is superior in right, title and dignity to all other persons, firms and entities claiming an interest in the Vessel pursuant to any lien and/or maritime claim.

5. On May 10, 2017, the Trustee filed the Chapter 7 Trustee’s Motion for an Order Approving a Public Sale and Bidding Procedures for Sale and for Other Relief (hereinafter, the “Motion”). The Motion was filed on an expedited basis seeking a shortened response period and hearing date and requesting court approval of a public sale and bidding structure for the sale of the Collateral.

6. Significantly, the Motion does not provide Atria Management with the right to credit bid the amount of its secured claim under 11 U.S.C. § 363(k) (the “Credit Bid”) and, instead, specifically states in paragraph 11(h) that no creditors will be allowed to credit bid.

7. Atria Management objects to the Motion to the extent it does not allow for Atria Management to Credit Bid the full amount of its secured claim pursuant to 11 U.S.C. § 506(a), including pre and post-petition interest, attorney’s fees, and costs. Denying Atria Management’s the right to Credit Bid on its Collateral to the full extent of its secured claim allows a third party to come in and bid less than the amount Atria Management is willing to Credit Bid in order to

protect its interests. Moreover, the auction sale process will be less competitive to the extent that prospective qualified bidders have less incentive to bid much more than the Credit Bid is worth, which may also create an artificial floor below the fair market value of the Vessel, absent credit bidding by Atria Management.

8. For purposes of the Motion, Atria Management should be permitted to credit bid under 11 U.S.C. §363(k) for the Property up to the full amount of its claim (consisting of principal, interest, attorney's fees and costs up through May 31, 2017) without prejudice to Atria Management's rights to assert a secured claim in an amount in excess of the Credit Bid, and without prejudice to the Trustee's rights to recover amounts that may be due under 11 U.S.C. §506(c), both rights and objections being expressly preserved by the parties. Furthermore, Atria Management shall be deemed a Qualified Bidder for the auction.

9. Currently, the Trustee and Atria Management are in the process of discussing and attempting to negotiate an acceptable resolution of the issues raised in the Motion and this Objection, subject to approval by the Court. Accordingly, Atria Management reserves any and all additional arguments that may be raised during the hearing to be held on this matter on May 17, 2017 at 10:00 a.m. before the Court.

Respectfully submitted, this the 15th day of May, 2017.

POYNER SPRUILL LLP

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies under penalty of perjury that she is over eighteen (18) years of age and that a copy of the

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was this day served upon the below-named persons, parties, and/or counsel by depositing a copy thereof in the United States Mail, First Class, postage prepaid, to the addresses shown below, or by CM/ECF:

Asset Trader  
300 Southtown Circle  
Rolesville, NC 27571

James. B. Angell, Esq.  
Nicholas C. Brown, Esq.  
Chapter 7 Trustee  
VIA CM/ECF

Bankruptcy Administrator  
VIA CM/ECF

This the 15th day of May, 2017.

POYNER SPRUILL<sup>LLP</sup>

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